Diana Choo Mei Ling (the executor of the estate of Chew Gaik Cheng, deceased) v Choo Lee Choy & Ors

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S2(S6)–22–178 OF 1989
KAMALANATHAN RATNAM J
26 APRIL 2001

Civil Procedure *— Adjournment — Application for — Repeated postponements — Plaintiff could not attend court — Medical certificate tendered, whether acceptable*

The plaintiff sued her father as the first defendant, the bank as the second defendant and the bank's solicitor as the third defendant. When the pleadings were closed, the plaintiff made no effort to proceed to trial. The case was fixed for hearing on 1 November 1999, and on that date the case was postponed as the plaintiff's solicitors requested an adjournment on grounds that she was then pregnant and under stress. On the date of the hearing, the plaintiff was again absent, her excuse being that her husband had met with an accident the previous day. By consent, the case was again postponed. Pursuant to a directive from the Chief Judge, Court No 2 was assigned all cases registered in Court No 1. The solicitors for the plaintiff again requested an adjournment, informing the court that the plaintiff was still in Australia and unable to return due to medical reasons. A medical certificate was appended. This request was objected to by all counsel for the defendants.

Held, dismissing the suit:

(1) Having considered the numerous postponements already granted in respect of this case and considering the fact that the letter from the registry was dated 7 November 2000, thus giving the plaintiff ample time to be present for her case fixed for hearing on 5 and 6 March 2001, the plaintiff ought to have made her return journey to Malaysia well in advance to prepare herself for the case. Even upon perusing the statement of claim the court found that not only has the plaintiff made serious allegations of fraud against her deceased father, the bank and a very senior solicitor, the plaintiff had also alleged fraud against the registrar of titles and yet the registrar had not been made a party. Further, since her father had passed away, she had done nothing to substitute the first defendant's estate as the first defendant (see pp 164H–165A).

(2) The medical certificate presented to the court was totally unacceptable. The doctor's name was conspicuously absent from the medical certificate notwithstanding the fact that there was a column requiring the doctor's name to be inserted. The medical certificate also fail to state the medical condition suffered by the plaintiff which rendered her unfit to attend court. Further, the stamp showing the clinic she had attended stated that it was an

after hours clinic. Surely if the plaintiff was suffering from serious illness she would have admitted herself to a proper clinic and a full report on her condition would have been faxed to her solicitors who could have produced the same to this court. What was even more confusing was that the medical certificate did not even state which part of Australia this clinic was situated. Having considered all issues, the court came to the conclusion that the plaintiff was quite content to let the case be left in court (see p 165B–E).

[**Bahasa Malaysia summary**

Plaintif telah menyaman bapanya sebagai defendan pertama, pihak bank sebagai defendan kedua dan peguamcara pihak bank sebagai defendan ketiga. Apabila pliding ditutup, plaintif tidak membuat apa-apa usaha untuk meneruskan perbicaraan. Kes telah ditetapkan untuk perbicaraan pada 1 November 1999, dan pada tarikh tersebut kes telah ditangguhkan kerana peguamcara plaintif telah memohon satu tangguhan atas alasan bahawa beliau sedang mengandung dan mengalami tekanan. Pada tarikh perbicaraan, plaintif sekali lagi tidak hadir, alasan beliau adalah bahawa suami beliau terlibat dalam kemalangan sehari sebelumnya. Dengan kebenaran, kes sekali lagi ditangguhkan. Berikutan satu arahan daripada Ketua Hakim, Mahkamah No 2 telah diberikan semua kes yang telah didaftarkan di Mahkamah No 1. Peguamcara bagi pihak plaintif sekali lagi memohon satu tangguhan, memaklumkan mahkamah bahawa plaintif masih di Australia dan tidak dapat pulang disebabkan alasan-alasan perubatan. Satu sijil perubatan telah dilampirkan. Permohonan ini telah dibantah oleh semua peguam bagi pihak defendan-defendan.

Diputuskan, menolak guaman tersebut:

(1) Setelah mempertimbangkan banyaknya penangguhan yang telahpun diberikan berhubung kes ini dan setelah mempertimbangkan hakikat bahawa surat daripada pendaftar adalah bertarikh 7 November 2000, yang demikian memberikan plaintif masa yang memadai untuk hadir untuk kes beliau yang ditetapkan pada 5 dan 6 Mac 2001, plaintif sepatutnya telah kembali dari destinasi ke Malaysia lebih awal untuk menyediakan diri untuk kes tersebut. Walaupun setelah meneliti pernyataan tuntutan, mahakmah mendapati bahawa bukan sahaja plaintif telah membuat dakwaan-dakwaan penipuan terhadap bapa beliau yang telah meninggal dunia, pihak bank dan seorang peguamcara yang kanan, plaintif juga telah mendakwa berlaku penipuan terhadap pendaftar hakmilik dan pendaftar belum lagi dijadikan sebagai satu pihak. Tambahan pula, memandangkan bapa beliau telah meninggal dunia, beliau tidak berbuat apa-apa untuk menggantikan harta pusaka defendan pertama sebagai defendan pertama (lihat ms 164H–165A).

(2) Sijil perubatan yang dikemukakan ke mahkamah tidak boleh diterima langsung. Nama doktor tidak dicatatkan pada sijil perubatan meskipun hakikatnya terdapat ruang yang menghendaki nama doktor disertakan. Sijil perubatan tersebut juga gagal untuk menyatakan keadaan perubatan yang dialami oleh plaintif yang menyebabkan beliau tidak sihat untuk hadir ke mahkamah. Tambahan pula, cop yang menunjukkan klinik di mana beliau telah pergi menyatakan bahawa ia adalah klinik di luar waktu klinik. Sememangnya jika plaintif mengalami kesakitan yang teruk beliau pasti telah masuk sendiri ke klinik yang sepatutnya dan satu laporan penuh tentang keadaan beliau sepatutnya telah difakskan kepada pegumacara beliau yang boleh mengemukakan yang sama ke mahkamah ini. Apa yang lebih mengelirukan adalah bahawa sijil perubatan tersebut tidak langsung menyatakan bahagian Australia yang mana klinik tersebut terletak. Setelah mempertimbangkan semua persoalan, mahkamah tiba kepada kesimpulan bahawa plaintif berpuas hati membiarkan kes tersebut di mahkamah (lihat ms 165B–E).]

Notes

For cases on application for adjournment, see 2(1) *Mallal's Digest* (4th Ed, 1998 Reissue) paras 132–136.

GS Yap (*Lee Min Choon & Co*) for the plaintiff.
HK Low (*Low & Lim*) for the first defendant.
Ajit Kumar (*Chooi & Co*) for the second defendant.
Dhinesh Bhaskaran (*Shearn Delamore & Co*) for the third defendant.

Kamalanathan Ratnam J:

Facts

The plaintiff, whose pleaded address showed that she was residing in Kuala Lumpur, sued her father as the first defendant, the bank as the second defendant and the bank's solicitor as the third defendant. The plaintiff pleaded various allegations against the defendants, including fraud against the third defendant, a very senior advocate and solicitor of the Malaysian Bar. Whilst the pleadings were closed as early as of 15 November 1990, the plaintiff made no effort to proceed to trial. Finally, the case was fixed for hearing on 1 November 1999 after a case management with the previous judge on 12 July 1999. On 1 November 1999, the plaintiff's solicitors requested an adjournment on the basis that she was then pregnant and under stress. The case was then postponed by consent to 26 June 2000 for hearing. On the date of the hearing, the plaintiff, who again was not present in court, requested an adjournment through her counsel on the grounds that on the previous day her husband had met with an accident. By consent the case was again postponed to 15 and 16 November 2000. However, by a letter dated 7 November 2000 the registry informed all solicitors concerned

that the case was again postponed to 5 and 6 March 2001. No reason was given.

By this time, pursuant to a directive from the Chief Judge of Malaya, Court No 2 was assigned all cases registered in Court No 1. On 2 March 2001, the solicitors for the plaintiff wrote a letter requesting an adjournment. The said letter is reproduced herewith:

> Your Ref:22-178-89
> Our Ref:EY/L/3386/95/DCML
> 2 Mac 2001
>
> PENOLONG KANAN PENDAFTAR
> Mahkamah Tinggi Sivil 2
> Jalan Ampang
> 50450 Kuala Lumpur
>
> *Fax (2389021)/Serahan Tangan*
>
> Puan,
>
> Per: Mahkamah Tinggi Guaman Sivil No S6-22-178-89
> *Diana Choo Mei Ling v Choo Lee Choy & Ors*
>
> Kami merujuk kepada perkara di atas.
> Pihak kami difahamkan bahawa perkara tersebut telah ditetapkan untuk bicara di hadapan Yang Arif Hakim Mahkamah 2 pada 5 Mac 2001. Pada pagi ini, pihak kami telah diberitahu plaintif sendiri yang dijangka untuk balik dari Australia minggu ini tidak sihat dan sakit tenat. Sedemikian, plaintif dinasihatkan supaya berehat dan tidak dapat balik ke Kuala Lumpur buat masa kini.
>
> Memandangkan keadaan ini, kami dengan rendah dirinya ingin memohon penangguhan perbicaraan tersebut. Pihak kami akan menghadiri Mahkamah pada 5 Mac 2001 tersebut untuk menyerahkan sijil medikal kepada Mahkamah. Diharapkan permohonan kami di sini dapat dibenarkan dan segala kesulitan amatlah dikesali.
>
> Yang benar,
>
> tt
> cc client

On 5 March 2001, all counsels were present for the hearing of the case.

Findings of the court

Mr Yap for the plaintiff informed the court that his client was in Australia and 'seriously ill'. He then tendered what he called a medical certificate which he said was couriered to him by the plaintiff from Australia. It is important to reproduce the said medical certificate which reads as follows:

> ..... 20 ....
> I hereby certify that on 28 February 2001, I examined DIANA CHOO who in my opinion is
> * suffering from a medical condition

who states that he/she was

and will be travel

* unfit for up to and including 4 March 2001.

He/she states that the incapacity commenced on 28 February 01.

Signature	Sgd
Doctor's Name	.....
and address	CHEVRON AFTER HOURS
(Please Stamp or Print)	MEDICAL SERVICE
* Delete as necessary'	24 PALM BEACH AVE.
	PALM BEACH 4221
	PH: 32 8666

On the basis of the said medical report, counsel asked for an adjournment. This request was vehemently objected to by all counsel for the defendants. Mr Ajit Kumar for the second defendant pointed out that the said case had been delayed for too long and that there is a related foreclosure proceeding put on hold for a number of years pending the outcome of this case. He also pointed that the medical certificate did not contain sufficient details to show the nature of the plaintiff's illness. Further, the fact that her father, the first defendant, had passed away was well known to the plaintiff and she had done nothing to substitute the first defendant's estate as the proper defendant. It was his view that the conduct of the plaintiff showed an inclination to merely leave the matter in court without wanting to pursue it to its conclusion. He informed the court that his instructions were to have the suit struck out with no further adjournments being granted.

Mr Dhinesh Bhaskaran for the third defendant pointed out that this suit had been dragging on for 12 years. Referring to the medical certificate, counsel submitted that no court in this country would accept such a medical certificate. For a start, he pointed out that the medical certificate refers to the plaintiff as suffering from a 'medical condition' which could even refer to a common cough and cold. The name of the doctor issuing the medical certificate is also missing. Counsel submitted that the case contained serious allegations against one of the leading solicitors in the country. It was also pointed out that having filed this suit against the said solicitor, the plaintiff also lodged a formal complaint against him with the Bar Disciplinary Board which summarily dismissed the complaint in August 1990. He therefore urged the court to dismiss the suit with costs as he was ready to proceed with his case. In reply, Mr Yap assured the court that the plaintiff has not settled in Australia but that he did not know why she had gone to Australia. To a question from the court as to how he had formed the conclusion that the plaintiff was 'seriously ill' since the medical certificate made no such conclusion or statement, he admitted that when he spoke with the plaintiff, she did not tell him of her medical condition.

Having considered the numerous postponements already granted in respect of this case and considering the fact that the letter from the registry was dated 7 November 2000, thus giving the plaintiff ample time to be present for her case fixed for hearing on 5 and 6 March 2001, the plaintiff ought to have made her return journey to Malaysia well in advance to

prepare herself for the case. Even upon perusing the statement of claim I find that not only has the plaintiff made serious allegations of fraud against her deceased father, the bank and a very senior solicitor, the plaintiff has also alleged fraud against the registrar of titles and yet the said Registrar had not been made a party. Further, since her father had passed away, she had done nothing to substitute the first defendant's estate as the first defendant.

The medical certificate presented to the court is totally unacceptable. It says 'that on 28 February 2001 I examined Diana Choo …'. Who this 'I' is, this court will never know because assuming that the 'I' mentioned in the medical certificate refers to a doctor, his name is conspicuously absent from the medical certificate notwithstanding the fact that there is a column requiring the doctor's name to be inserted. The medical certificate states that the plaintiff is suffering from 'a medical condition'. What is this medical condition that would make her unfit for travel? Surely there is nothing wrong in stating in the medical certificate what that illusive medical condition actually is, more so when the plaintiff is relying on that medical condition to absent herself from a court appearance. Further, the stamp showing the clinic she had attended states that it is an after hours' clinic. Surely if the plaintiff was suffering from serious illness she would have admitted herself to a proper clinic and a full report on her condition would have been faxed to her solicitors who could have produced the same to this court. What is even more confusing is that the medical certificate does not even state which part of Australia this clinic is situated. This court has not been told where 'Palm Beach' is. Having considered all issues, I came to the conclusion that the plaintiff is quite content to let the case be left in court. This delay and the unwillingness on the part of the plaintiff to pursue her case to a conclusion is unacceptable. I therefore dismissed the suit with costs to the defendants.

Suit dismissed.

Reported by Wong Ee Lynn